

REMARKS

In a telephone conference with Examiner Li on November 23, 2004, which Applicants' representative appreciates, the Examiner indicated that she had not yet considered the amendments filed on November 17, 2004 ("Amendment") and November 18, 2004 ("Supplemental Amendment"). Applicants respectfully request that neither the Amendment filed on November 17, 2004 nor the Supplemental Amendment filed in November 18, 2004 be considered. Instead, Applicants request that only the present amendment ("Superseding Amendment") be considered. This Superseding Amendment incorporates the previously filed Supplemental Amendment and part of the Amendment.

In this Superseding Amendment, claims 9, 15-17, and 39 are amended. Claim 39 has been amended to address an antecedent basis issue. Claim 9 has been amended to clarify the invention for previously reciting "administering at." Claims 15-17 were amended to address an antecedent basis issue. It is believed that these amendments place the case in better condition for appeal by reducing issues. These amendments do not introduce new matter as well. Applicants respectfully request these amendments be entered.

Applicants would also like to reiterate the impropriety of withdrawing claims 68-74 because these claims depend on the elected species. The Office Action mailed June 15, 2004 says that "the dependencies of claims 68-74 are improper because the sequences of claims 68-74 encompass rather than further limit the sequence recited in claim 32." Action at page 2. This is incorrect. Claim 32 and claims 68-74 are provided below:

32. The method of claim 1, wherein the MDA polypeptide comprises amino acids from 182 to 206 of SEQ ID NO:2.

68. (Withdrawn) The method of claim 32, wherein the MDA polypeptide comprises amino acids from 175 to 206 of SEQ ID NO:2.
69. (Withdrawn) The method of claim 68, wherein the MDA polypeptide comprises amino acids from 150 to 206 of SEQ ID NO:2.
70. (Withdrawn) The method of claim 69, wherein the MDA polypeptide comprises amino acids from 125 to 206 of SEQ ID NO:2.
71. (Withdrawn) The method of claim 70, wherein the MDA polypeptide comprises amino acids from about 100 to about 206 of SEQ ID NO:2.
72. (Withdrawn) The method of claim 71, wherein the MDA polypeptide comprises amino acids from 75 to 206 of SEQ ID NO:1.
73. (Withdrawn) The method of claim 72, wherein the MDA polypeptide comprises amino acids from 49 to 206 of SEQ ID NO:2.
74. (Withdrawn) The method of claim 73, wherein the MDA polypeptide comprises amino acids from 1 to 206 of SEQ ID NO:2.

Claims 68-74 are proper dependent claims because they further limit the sequence of the MDA-7 polypeptide. They successively require more and more amino acids from SEQ ID NO:2 and therefore are more limiting than the claims from which they depend. This also illustrates why a species election between them is inappropriate. If claim 32 is free of the prior art, claims 68-74 will also be necessarily free of the prior art and therefore, there is no issue regarding a search of these claims being an undue burden. A search of claim 32 will necessarily yield the art relevant to claims 68-74. For these reasons, Applicants respectfully request these claims no longer be considered withdrawn.


As discussed with the Examiner, Applicants do not want to amend claim 1 and claims 36-37 based on the restriction requirement, which Applicants are petitioning.

Reconsideration is respectfully requested.

CONCLUSION

Should the Examiner desire to discuss this further, she is invited to contact the undersigned attorney at 512-536-3081.

Respectfully submitted,


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